



General Assembly

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A/AC.182/L.63
13 December 1989

ORIGINAL: ENGLISH

SPECIAL COMMITTEE ON THE CHARTER
OF THE UNITED NATIONS AND ON
THE STRENGTHENING OF THE ROLE OF
THE ORGANIZATION
12 February-2 March 1990

PROVISIONAL AGENDA OF THE SPECIAL COMMITTEE ON THE CHARTER OF
THE UNITED NATIONS ON THE STRENGTHENING OF THE ROLE OF THE
ORGANIZATION

To be convened at United Nations Headquarters
on Monday, 12 February 1990, at 10.30 a.m.

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the questions mentioned in General Assembly resolution 44/37 of 4 December 1989, in accordance with the mandate of the Special Committee as set out in that resolution.
6. Adoption of the report.



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SPECIAL COMMITTEE ON THE CHARTER
OF THE UNITED NATIONS AND ON
THE STRENGTHENING OF THE ROLE
OF THE ORGANIZATION
12 February-2 March 1990

PREPARATION OF A DRAFT HANDBOOK ON THE PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

Progress report by the Secretary-General

1. The General Assembly, in paragraph 7 of resolution 44/37 of 4 December 1989, requested the Secretary-General to continue, on a priority basis, the preparation of a draft handbook on the peaceful settlement of disputes between States, on the basis of the outline elaborated by the Special Committee and in the light of the views expressed in the course of the discussions in the Sixth Committee 1/ and in the Special Committee, 2/ and to report to the Special Committee at its session in 1990 on the progress of work, before submitting to it the draft handbook in its final form, with a view to its approval at a later stage.
2. Under the agreement reached by the Special Committee at its 1984 3/ and 1985 4/ sessions with respect to the preparation of the draft handbook, the Secretary-General was requested, in order to obtain assistance in the performance of his task, to consult periodically with a representative group of competent individuals from among the members of the permanent missions of the States Members of the United Nations, which would be open to all members of the Special Committee, with the timing of meetings and the questions to be discussed being left to the discretion of the Secretariat.
3. In accordance with that agreement, the Consultative Group on the Handbook on the Peaceful Settlement of Disputes between States held its first meeting under the chairmanship of the Under-Secretary-General, the Legal Counsel, on 3 April 1986. The Consultative Group reviewed the drafts prepared by the Secretariat which dealt with the introduction, "Purpose and features of the handbook", chapter I, "Principle of the peaceful settlement of disputes between States" and section (1) of chapter II, "Means of settlement", relating to negotiations and consultations.

The progress report of the Secretary-General 5/ submitted after that meeting of the Consultative Group was examined by the Special Committee at its 1986 session, which took note of it. 6/ Another progress report 7/ was examined by the Special Committee at its session in 1987. The Special Committee took note of the report. 8/ The second meeting of the Consultative Group on the Handbook on Peaceful Settlement of Disputes between States was held on 19 February and 7 March 1988 under the chairmanship of the Under-Secretary-General, the Legal Counsel. The Consultative Group reviewed the drafts prepared by the Secretariat which dealt with subsections on inquiry, mediation and conciliation of section (2) of chapter II, "Means of settlement", of the draft handbook. The progress report of the Secretary-General 9/ submitted after that meeting of the Consultative Group was examined by the Special Committee at its 1988 session, which took note of it. 10/ The third meeting of the Consultative Group on the Handbook on the Peaceful Settlement of Disputes between States was held on 3 May 1988 under the chairmanship of the Under-Secretary-General, the Legal Counsel. The Consultative Group reviewed the draft prepared by the Secretariat which dealt with section (3) on arbitration of chapter II, "Means of settlement", of the draft handbook. The progress report of the Secretary-General 11/ submitted after that meeting of the Consultative Group was examined by the Special Committee at its 1989 session, which took note of it. 12/

4. The fourth meeting of the Consultative Group on the Handbook on the Peaceful Settlement of Disputes between States was held on 17 April 1989 under the chairmanship of the Under-Secretary-General, the Legal Counsel.

5. The Consultative Group reviewed the draft prepared by the Secretariat which dealt with the subsection on good offices of section (2) of chapter II, "Means of settlement", of the draft handbook.

6. In their general comments several members of the Consultative Group stressed the need to include more examples of good offices undertaken by States, since most examples mentioned in the draft referred to good offices undertaken by the Secretary-General of the United Nations by himself or together with other individuals. Specific substantive comments as well as drafting suggestions were also made, which the Secretariat duly took into account, together with the general observations, in revising the draft of the section in question.

7. The fifth meeting of the Consultative Group on the Draft Handbook on the Peaceful Settlement of Disputes between States was held on 15 September 1989 under the chairmanship of the Under-Secretary-General, the Legal Counsel.

8. The Consultative Group reviewed the draft prepared by the Secretariat which dealt with section (4) on judicial settlement of chapter II, "Means of settlement", of the draft handbook.

9. In their general comments, members of the Consultative Group commended the Secretariat for its continued efforts towards making the handbook a practical reference guide by avoiding theoretical discussions in it. The presentation in the draft of examples of the category of cases which States had submitted to judicial settlement was found particularly useful in assisting users in the determination of

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the types of disputes best suited to judicial settlement. In this connection, some members of the Consultative Group emphasized the need to include examples involving courts of different regions or different institutional or procedural characters. As regards the functional aspects, some members further suggested that the advisory functions of international courts, as distinguished from their adjudicatory functions, might be discussed more fully in the draft. On the question of the relationship between arbitration, which is dealt with in section (3) of chapter II of the handbook, and judicial settlement, some members observed that it was advisable not to suggest a clear-cut distinction between these two judicial means of settlement of disputes since both of them render decisions in accordance with judicial procedures and on the basis of law. There were also comments of a specific and drafting nature which, together with the above general ones, the Secretariat duly took into account in its revision of this section of the handbook.

10. The sixth meeting of the Consultative Group on the Draft Handbook on the Peaceful Settlement of Disputes between States was held on 11 December 1989 under the chairmanship of the Under-Secretary-General, the Legal Counsel.

11. The Consultative Group reviewed the drafts prepared by the Secretariat which dealt with sections (5) and (6) on resort to regional agencies or arrangements and other peaceful means, respectively, of chapter II, "Means of settlement", of the draft handbook which concluded this chapter.

12. As regards the section on "Resort to regional agencies or arrangements", the members of the Consultative Group generally endorsed the structure of the section and found it to contain pertinent information on the use of the various regional agencies or arrangements therein described. Some comments of a drafting nature were also made on the draft and were taken into account by the Secretariat in revising the section in question. As regards the section on "other peaceful means", the members of the Consultative Group in their general comments indicated that some of the examples of "other peaceful means" for the settlement of disputes given in the section represented methods which were distinct from the more familiar means of settlement of disputes described in the drafts of the other sections of chapter II, namely, negotiation, inquiry, good offices, mediation, conciliation, arbitration, judicial settlement and regional agencies or arrangements. There was a general agreement in the Consultative Group that those examples merited inclusion in section 6. Some members of the Consultative Group suggested that a stronger emphasis should be given to the fact that, although some of the peaceful means described in section 6 were entirely novel and original in character, a majority of them consisted, rather, in adaptations or combinations of the above-mentioned more familiar means. Several members of the Consultative Group suggested that section 6 should be reviewed in this manner and be restructured accordingly. Several comments of a specific nature relating to drafting were also made. They were duly taken into account by the Secretariat in revising this section of the handbook.

13. The seventh meeting of the Consultative Group on the Draft Handbook on the Peaceful Settlement of Disputes between States was held on 5 February 1990 under the chairmanship of the Under-Secretary-General, the Legal Counsel.

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14. The Consultative Group reviewed the draft prepared by the Secretariat on chapter IV, "Procedures envisaged in other international instruments", of the draft handbook.

15. In their general comments, the members of the Consultative Group appreciated the fact that the information contained in the chapter reflected thorough research covering provisions of numerous multilateral instruments as well as presenting adequate discussion of the procedures contained in the constituent instruments of international organizations of a universal character. Comments of a specific nature were also made on the practice of certain international organizations which required additional research, in consultation with the organizations in question. The Secretariat will take these comments into account in its revision of the draft of the chapter.

16. The only remaining chapter of the handbook is chapter III, "Procedures envisaged in the Charter of the United Nations: primary role of the Security Council, important role of the General Assembly, role of other principal organs of the United Nations". It has been already drafted and is currently under review within the Secretariat. The draft chapter will be submitted to the Consultative Group in time to permit the submission of the report on it and on the handbook as a whole to the 1991 session of the Special Committee.

17. The assignment to prepare the draft handbook has been carried out within the limits of existing resources, exclusively by the regular Secretariat staff, on the understanding that it is a long-term undertaking, requiring extensive research, and its implementation should be without detriment to the established standards of efficiency in providing secretariat services to meetings of the Sixth Committee of the General Assembly and of the legal bodies associated with it. Furthermore, it has become obvious that the preparation of the draft handbook cannot proceed as expeditiously as the Secretariat would have expected in view of the current financial situation of the United Nations, which is not without effect on the availability of personnel for this assignment.

Notes

- 1/ See A/C.6/44/SR.7-15 and 44.
- 2/ See Official Records of the General Assembly, Forty-fourth Session, Supplement No. 33 (A/44/33), chap. V, sect. B.
- 3/ Ibid., Thirty-ninth Session, Supplement No. 33 (A/39/33), para. 133.
- 4/ Ibid., Fortieth Session, Supplement No. 33 (A/40/33), para. 58.
- 5/ A/AC.182/L.46.
- 6/ Official Records of the General Assembly, Forty-first Session, Supplement No. 33 (A/41/33), para. 31.

Notes (continued)

7/ A/AC.182/L.51.

8/ Official Records of the General Assembly, Forty-second Session, Supplement No. 33 (A/42/33), para. 14.

9/ A/AC.182/L.58.

10/ Official Records of the General Assembly, Forty-third Session, Supplement No. 33 (A/43/33), para. 61.

11/ A/AC.182/L.61.

12/ Ibid., Forty-fourth Session, Supplement No. 33 (A/44/33), para. 125.



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OF THE ORGANIZATION
12 February-2 March 1990

NEW ISSUES FOR CONSIDERATION IN THE SPECIAL COMMITTEE

Working paper submitted by the Union of Soviet Socialist Republics

1. The exchange of views between members of the Special Committee in 1989 revealed a positive response to the proposals which may become topics for discussion at a later stage of the Committee's work.

(a) Ways of expanding co-operation between the United Nations and regional organizations. As we understand it, this may involve enhancing the role of regional organizations in the efforts to create a healthier political climate in various parts of the world, eliminate existing hotbeds of tension and conflict, prevent the emergence of new ones, and resolve global problems, as well as fostering the co-operation of regional organizations with the United Nations and above all with its Security Council. Other proposals that may also deserve consideration have to do with developing mechanisms and safeguards of regional security. In our view, the permanent members of the Security Council could act as guarantors in this respect, committing themselves never to use force or the threat of force, to renounce such practices as demonstrative military presence and supplying arms to conflicting parties, it being generally agreed that these practices are among the factors which serve to aggravate regional conflicts.

(b) Broadening the peace-making efforts of the Secretary-General of the United Nations. The following recommendations regarding the activities of the Secretary-General can be considered in this context:

- Submitting information to the Security Council on a regular basis, including information of a confidential nature, about developments in any area of conflict or about other matters that might be of interest to the Council;

- Submitting on his own initiative reports for consideration by the Security Council on individual issues relating to the maintenance of international peace and security, including disarmament;

- More frequent exercise of the Secretary-General's right under Article 99 of the United Nations Charter to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security;

- Making it a regular practice for the General Assembly to consider thoroughly the Secretary-General's annual reports on the work of the Organization and to take action, if need be, on the conclusions and recommendations contained therein;

The Secretary-General's proposal on the establishment under United Nations auspices of a multilateral centre for reducing the risk of war could also be examined in this context.

We believe that formalizing these understandings in a separate General Assembly resolution or in a more general document would contribute to the enhancement of the Secretary-General's role in maintaining international peace and security.

2. Along with the proposals listed above, the following ideas may also be of interest.

(a) We proceed from the assumption that the Special Committee could in principle undertake the task of elaborating a draft general instrument on peaceful settlement of disputes, although a special preparatory body could certainly be established for the purpose. The Special Committee might also join in elaborating a wide-ranging long-term programme on the development of international law within the framework of the United Nations Decade of International Law proclaimed by the General Assembly for the 1990s.

(b) There could be practical value in considering in the Special Committee the question of the ways and means of implementing the Charter of the United Nations and the norms of international law as well as related enforcement actions vis-à-vis a State that has breached the peace or failed to comply with Security Council decisions. Consideration of this matter would be especially appropriate in connection with the proclamation of the 1990s as the United Nations Decade of International Law. In this context, consideration should obviously be given to the question of the specific measures that might be taken with a view to implementing the numerous positive decisions adopted by the United Nations, and above all by the Security Council, to establish a stable legal order.

(c) Another question which is highly relevant today and could be considered in the Special Committee has to do with provisional measures which the Security Council may take in accordance with Article 40 of the Charter of the United Nations in order to prevent an aggravation of the situation and to resolve dangerous crises and regional conflicts.

(d) We are encouraged by the positive attitude towards the Soviet proposals for strengthening the preventive functions of the United Nations, as well as the desire for the Special Committee to explore the question of broadening the sphere of application of preventive United Nations activities. In our view, this could include the prevention of the potentially explosive situations which are caused by internal socio-economic and other factors; the Secretary-General's enhanced ability to perform information, consultative and mediatory functions in order to avert the threat of war on a global or regional scale; the formation under United Nations auspices of an extensive network for monitoring, collecting and processing information on the situation in areas of conflict; and so forth.

(e) We are also interested in the idea that the Special Committee might consider measures aimed at strengthening the collective security régime provided for in the Charter of the United Nations.

(f) The proposal that the question of the effectiveness of the United Nations system as a whole be studied also deserves consideration.



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SPECIAL COMMITTEE ON THE CHARTER
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OF THE ORGANIZATION
12 February-2 March 1990

WORKING PAPER SUBMITTED BY BELGIUM, CZECHOSLOVAKIA, GERMAN
DEMOCRATIC REPUBLIC, GERMANY, FEDERAL REPUBLIC OF, ITALY,
JAPAN, NEW ZEALAND AND SPAIN

FACT-FINDING BY THE UNITED NATIONS IN THE FIELD OF THE
MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

Preambular paragraph

Recognizing that the full use and further development of the fact-finding capabilities of the United Nations could contribute to the strengthening of the role of the United Nations in the maintenance of international peace and security,

I

1. In performing its functions for the maintenance of international peace and security, the United Nations should have full knowledge of all relevant facts. To this end it should consider undertaking fact-finding activities.
2. For the purpose of the present paper fact-finding means any activity designed to ascertain facts which the competent United Nations organs need to exercise effectively their functions in the field of the maintenance of international peace and security.
3. Fact-finding should be comprehensive, objective and impartial.
4. As soon as a situation which might threaten the maintenance of international peace and security is identified, the United Nations should consider sending a fact-finding mission to the relevant areas, unless all the facts can be obtained through the use of the existing information-gathering capabilities of the Secretary-General.

II

5. In deciding if and when a fact-finding mission should be undertaken, the competent United Nations organs should keep in mind that the purpose of fact-finding missions should be to gain objective and detailed knowledge of the facts. They should also consider that the sending of a fact-finding mission may signal the concern of the United Nations as a whole and serve as a means for building confidence. However, precautions should be taken so that the fact-finding mission results rather in defusing than in aggravating the situation.
6. Fact-finding missions may be undertaken by the Security Council, the General Assembly and the Secretary-General, in the context of their respective responsibilities in maintaining international peace and security in accordance with the Charter of the United Nations.
7. In deciding to whom to entrust the conduct of a fact-finding mission, the Security Council and the General Assembly should give preference, in general, to the Secretary-General, who may designate a special representative or a group of experts reporting to him. Resort to an ad hoc subsidiary body of the Security Council or the General Assembly may also be considered.
8. In considering the possibility to undertake fact-finding missions, the competent United Nations organs should keep in mind the necessity of avoiding duplication of efforts.
9. States should be encouraged to bring any situation which is likely to threaten the maintenance of international peace and security, and where the facts are in dispute, to the attention of a competent organ of the United Nations, which should consider effective ways to ascertain such facts.
10. Any request for the sending of a United Nations fact-finding mission by a State concerned to its territory, should be given expeditious consideration.
11. Once the decision has been made to undertake a fact-finding mission, the mission should be dispatched without delay.
12. The decision by the competent United Nations organ to undertake fact-finding should always contain a clear mandate and precise requirements for the report. The report should be limited to a statement of facts.
13. The sending of a United Nations fact-finding mission to the territory of any State requires that State's prior consent without prejudice to the obligation of Member States under Article 25 of the Charter.
14. States should be encouraged to follow a policy of admitting United Nations fact-finding missions to their territory.
15. The sending United Nations organ is encouraged to ask the receiving State to answer the organ's request to admit the mission within a given period.

16. Any request for the consent of a State to receive a fact-finding mission within its territory should be given timely consideration.

17. In the event a State refuses to admit a United Nations fact-finding mission to its territory, it should inform the sending United Nations organ without delay, indicating the reasons for its refusal, when appropriate. It should keep the possibility of admitting the fact-finding mission under active review.

18. States may at any time declare that they commit themselves to admit to their territory any United Nations fact-finding mission dispatched to assist in the maintenance of international peace and security. These States shall be given an opportunity to voice their views to the sending United Nations organ.

19. These general unilateral declarations may also be made only for certain types of fact-finding missions or for a certain time. The Secretary-General shall give adequate publicity to such declarations.

20. States should be encouraged to include provisions on the use of United Nations fact-finding missions in agreements they might conclude for the peaceful settlement of disputes.

21. States should co-operate with, and give full and prompt assistance to, United Nations fact-finding missions.

22. Fact-finding missions should enjoy all freedoms and facilities needed for discharging their mandate. In particular:

(a) They should promptly be admitted in the areas to which they have been dispatched;

(b) They should have freedom of movement and, in accordance with national law, full access to such places and information as they consider relevant to the performance of their task;

(c) They should be entitled to discharge their mandate in full confidentiality without any pressure or interference;

(d) They should have the right to communicate freely with the United Nations and among themselves, and with all persons they consider relevant for the discharge of their mandate, with full guarantee that no harmful consequence will be incurred by these persons.

23. The members of fact-finding missions should enjoy the privileges and immunities specified in the Convention on the Privileges and Immunities of the United Nations.

24. Fact-finding missions shall act in strict conformity with their mandate. Without prejudice to their privileges and immunities, their members shall respect the laws and regulations of the State in the territory of which they exercise their functions.

25. Fact-finding missions should perform their task in an impartial way. Their members shall not seek or receive instructions from any Government or from any authority other than the competent United Nations organ.
26. States directly concerned by the report of a fact-finding mission should be given an opportunity, whenever appropriate, to let the sending organ know their views in respect of the facts reflected in the report.
27. Whenever fact-finding includes hearings, appropriate procedural guarantees should be provided for in the rules of procedure that may be adopted.
28. The Secretary-General, on his own initiative or at the request of States concerned, should consider undertaking fact-finding missions in areas where a situation exists which might threaten the maintenance of international peace and security. He may, where appropriate, bring the information obtained to the attention of the Security Council.
29. The Secretary-General should pay special attention to using the United Nations fact-finding capabilities at as early a stage as possible, in order to contribute to the prevention of disputes and situations which may threaten the maintenance of international peace and security.
30. The Secretary-General should be encouraged to prepare and update lists of experts in various fields so as to have them available at any time for fact-finding missions. He should also maintain and develop, within existing resources, capabilities for the event of emergency fact-finding missions.
31. The Security Council should consider the possibility to undertake fact-finding to obtain the knowledge of the facts needed for discharging effectively its responsibility in the maintenance of international peace and security in accordance with the Charter.
32. The Security Council should, wherever appropriate, consider the possibility to provide for fact-finding in implementing its resolutions.
33. The General Assembly should consider the possibility to undertake fact-finding to obtain the knowledge of the facts needed for exercising effectively its functions under the Charter for the maintenance of international peace and security.
34. The General Assembly should, wherever appropriate, consider the possibility to provide for fact-finding in implementing its resolutions relevant to the maintenance of international peace and security.

III

35. The Secretary-General should survey the world-wide state of international peace and security regularly and systematically to facilitate the prevention or removal by the United Nations of situations which might threaten international peace and security. The Secretary-General's capacity to provide early warning of

such situations should be enhanced. Where appropriate, he should bring relevant information to the attention of the Security Council.

36. To this end he should make full use of and continue to strengthen the information-gathering capabilities of the Secretariat. This may include, when necessary, the use of United Nations information centres to collect publicly available information related to international peace and security.

37. The Secretary-General should encourage United Nations officials outside Headquarters to bring to his early attention, whenever urgent, any situation which may threaten international peace and security.

IV

38. The sending of a United Nations fact-finding mission shall be without prejudice to the use by the States concerned of inquiry or any similar procedure provided for in a treaty between them.

39. Nothing in the present paper shall be construed as prejudicing in any manner the provisions of the Charter, including those contained in Article 2, paragraph 7, thereof, or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter.



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Special Committee on the Charter of the
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RATIONALIZATION OF EXISTING UNITED NATIONS PROCEDURES

Paper submitted by the Chairman following informal consultations

1. Without prejudice to article 18 of the Charter and with a view to facilitating the work of the United Nations, including, whenever possible, the adoption by the General Assembly of agreed texts of resolutions and decisions, informal consultations should be carried out with the widest possible participation of Member States.
2. When an electronic voting system is available for recording how votes were cast, a roll-call vote should as far as possible not be requested.
3. Before the end of each General Assembly session, the General Committee should, in the light of the experience it has acquired during that session, consider drawing up its observations on the organization of the work of the session, with a view to facilitating the organization of the work of future sessions of the General Assembly.
4. The agenda of the General Assembly should be simplified by grouping or merging, to the extent possible, related items and, where it is appropriate for discussion of a particular item, by setting an interval of more than a year between the discussions on it. For this purpose, the Chairman of the Main Committee concerned or, as appropriate, the President of the General Assembly, should undertake consultations with delegations.
5. The General Committee should consider, at the beginning of each session of the General Assembly, recommending that certain Main Committees should meet in sequential order, taking into account such matters as the number of meetings required for the consideration of the questions with which they are charged at that session, the organization of the work of the whole session and the problem of participation of smaller delegations.

6. In making recommendations as to how agenda items should be allocated to the Main Committees and the Plenary of the General Assembly, the General Committee should ensure the best use of the expertise of the Committees.

7. When the General Assembly considers whether it needs to establish subsidiary organs, in accordance with Article 22 of the Charter, it should give careful consideration as to whether the subject-matter in question could be dealt with by existing organs, including its Main Committees and their working groups. Subsidiary organs should seek constantly to improve their procedures and methods of work in order to ensure effective consideration of questions allocated to them by the General Assembly.

8. The dates and length of the sessions of bodies of the General Assembly that meet intersessionally should be determined as soon as possible by the General Assembly, as appropriate following advice from the Committee on Conferences, on the proposal of the Secretary-General. The General Assembly should take account of the past experience, the state of current work in regard to the mandate given to the body in question and the need to avoid as far as possible overlapping meetings of bodies which deal with subject-matter of a similar nature.

9. Informal consultations about the work of bodies of the General Assembly that meet intersessionally should continue to be held in advance of the sessions of such bodies in order to facilitate the conduct of their sessions, especially as regards the composition of the bureau and the organization of work.

10. Resolutions should request observations from States or reports by the Secretary-General in so far as they are likely to facilitate the implementation of the resolutions or the continued examination of the question.
